



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

May 23, 1963

Mr. John S. Hovenga
Executive Director
Board of Regents
State Teachers Colleges
Box K, Capitol Station
Austin 11, Texas

Opinion No. C-83

Re: Whether the term "annuities" as used in Article 6228a-5, Vernon's Civil Statutes, embraces group annuities as well as individual annuity contracts. Should the board of regents of the institutions of higher learning hold the master contract in the name of the board of regents of the respective institutions or should contracts be issued in the name of the annuitant only, even if the contract is classified as a group annuity.

Dear Mr. Hovenga:

The questions submitted in your opinion request are as follows:

"(1) Does the term 'annuities' as used in the statute referred to in the caption (Article 6228a-5, Vernon's Civil Statutes) embrace group annuities as well as individual annuity contracts?

"(2) Shall the board of regents of the institutions of higher learning hold the master contract in the name of the board of regents of the respective institutions of higher learning, or shall contracts be issued in the name of the annuitant only, even if the contract is classified as a group annuity?"

Article 6228a-5, Vernon's Civil Statutes, reads as follows:

"Local Boards of Education of the Public Schools of this state and the Governing Boards of the state-supported institutions of higher education are hereby authorized to enter into agreements with their employees for the purchase of annuities for their employees as authorized in Section 403(b) of the Internal Revenue Code of 1954, as amended."

In regard to your first question, Article 6228a-5, Vernon's Civil Statutes, does not limit the term "annuities" to either group or individual annuities. However, Article 6228a-5 refers to Section 403(b) of the Internal Revenue Code. In Section 403(b) and the Internal Revenue Regulations for that Section and related Sections, no distinction has been drawn between group annuities and individual annuity contracts. Since the general term "annuities" has not been limited in either of these statutes, the Legislature must have intended the term to embrace both group and individual annuities. In the absence of evidence to the contrary, common terms used in an enactment should be given their common meaning. 2 Sutherland Statutory Construction (3rd Ed. 1943) 429.

As to your second question, Article 6228a-5 states that the board may enter into agreements with their employees for the purchase of annuities for their employees as "authorized in Section 403(b) of the Internal Revenue Code of 1954, as amended." (Emphasis added). This evidences the intent that these "annuities would be set up in a manner in which they would be "tax-sheltered" annuities under the Internal Revenue Code and Regulations. The question which you have posed to us is one of mechanics in the setting up of such a plan. In setting up your plan, you should discuss the details with representatives of the Internal Revenue Service and submit proposed plans to them for approval.

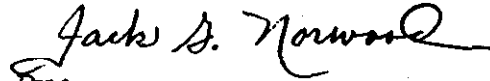
S U M M A R Y

The term "annuities" as used in Article 6228a-5, Vernon's Civil Statutes, embraces group annuities as well as individual annuity contracts. Whether the annuity contract should be held in the name of the Board of Regents of the school or in the name of the individual employees is a matter that you should discuss with the representatives of the Internal Revenue Service and submit plans to them for approval.

Mr. John S. Hovenga, page 3 (C- 83)

Sincerely,

WAGGONER CARR
Attorney General



By:
Jack G. Norwood
Assistant

JGN:mkh

APPROVED:
OPINION COMMITTEE

W. V. Geppert, Chairman
James M. Strock
Wayne Rogers
Pat Bailey
Ben Harrison

APPROVED FOR THE ATTORNEY GENERAL
BY: Stanton Stone